HIGH COURT OF UTTARANCHAL AT NAINITAL

A.O. No. 1626 of 2001

(Old No. 298 of 1983)

U.P. State Bridge Corporation Ltd. ..... Appellant

Versus

Smt. Chameli Devi & others ..... Respondents

Sri Ganesh Kandpal, Advocate for the appellant
Sri T.A. Khan, Advocate for the respondents.

Dated: 26. 8.2004

Hon. Rajesh Tandon J.

Heard the learned counsel for the parties.

Present appeal has been preferred against the judgment and award dated 31.1.1983 by the Motor Accident Claims Tribunal, Tehri Garhwal.

Briefly stated Smt. Chameli Devi & others have filed a claim petition under Motor Vehicles Act for grant of compensation on account of death of Sri Kali Ram in a motor vehicle accident on 12.4.1981. The petitioners have alleged that the deceased boarded Jeep No. UTD 4270 at Zero Band Tehri for going to Tehri city. After covering a distance of 5 kms. the jeep met with accident and fell down in to the river Bhagirathi. The deceased sustained fatal injuries in the accident and he succumbed to the injuries.

The deceased was employed as a Chaukidar in the Bridge Corporation and jeep involved in the accident was also belonged to the opposite party Bridge corporation and the accident had taken place due to rash and negligent driving by the driver of the Jeep.

The Claim petition has been contested by the opposite party Bridge Corporation and has alleged that the jeep was insured with the Oriental Fire and General Insurance Company and so the compensation, if any, is payable by the insurance company.

The opposite party no.2 the Oriental Fire and General Insurance Company has alleged that at the time of accident the jeep was being driven by Sri S.C. Agarawal Assistant Engineer, who had no valid driving licence. It was also alleged that the capacity of the jeep was only 5 passengers but it was carrying 10 passengers in violation of the provisions of the terms and condition of the insurance policy, therefore, the insurance company is not liable to pay compensation.

On the pleadings of the parties the Claim Tribunal has framed the following issues:

(1) Whether the jeep was begin driven at the time of accident by S.C. Agarwal? If so, its effect?

(2) Whether the accident took place due to the rash and negligent driving of jeep by the driver opposite party no. 3?

(3) Whether SC Agarwal had a valid driving licence? If not, the insurance company still liable to pay compensation ?

(4) Whether driver opposite eparty no.3 had a valid driving licence for hill road if he was driving the jeep at the time of the accident? If no, its effect?

(5) Whether the insurance company is not liable to pay any compensation as alleged in para 3 of the written statement?

(6) Whether the petition is not maintainable against the OP No.1?

(7) To what relief, if any, are the claimants entitled?

The learned Claims Tribunal has held that at the time of accident the jeep was driving by it driver Shiv Narain opposite party no.3 and the accident had taken place due to rash and negligent driving. The Claim Tribunal has awarded a sum of Rs.48,000/- to the petitioners alongwith interest at the rate of 6% per annum against the opposite party no.1 and 2. It was also held that the insurance company is not liable to pay compensation as the vehicle was only insured for third party risk.

Feeling aggrieved the present appeal has been filed by the Bridge Corporation.

On the basis of ocular testimony of Nem chand Jain, Sant Dass and Sri P.S. Negi who were boarded in the Jeep at the time of accident and were survivors in the accident, the claims Tribunal has held that the accident had taken place due to rash and negligent driving by Sri Shiv Narain. Shiv Narain opposite party no.2 has also filed his driving licence which is a valid driving licence. The Claim Tribunal has held that the monthly income of deceased Kali Ram was Rs.350/- per month. He was 36 years of age at the time of accident. The claim Tribunal has

awarded a sum of Rs.48,000/- to the petitioners as compensation along with interest @ 6% per annum.

The learned counsel for the appellant has submitted that the jeep was insured with Oriental Fire and General Insurance Company at the time of accident; therefore, the insurance company is liable to pay compensation to the claimants.

As against this the learned counsel for the respondents has submitted that the jeep was insured only for third party risk. The third party risk does not cover the risk to the passengers who are not carried for hire or reward in the vehicle. The vehicle in question was a jeep belonging to the corporation. It was not used for carrying passenger for hire or reward. The passengers sitting in the jeep were gratuitous passengers and consequently the insurance company is not liable to pay compensation. The learned counsel has relied upon the case National Insurance Co. Ltd. vs. Baljit Kaur and others, (2004) 2 SCC 1. The Apex Court has held has under:

"12. *We find ourselves unable, furthermore, to countenance the contention of the respondents that the words "any person" as used in Section 147 of the Motor Vehicles Act, would be rendered otiose by an interpretation that removed gratuitous passengers from the ambit of the same. It was observed by this Court in the case concerning New India Assurance Co. Ltd. v. Asha Rani*[2] *that the true purport of the words "any person" is to be found in the liability of the insurer for third-party risk, which was sought to be provided for the enactment.*

13. *It is pertinent to note that a statutory liability enjoined upon an owner of the vehicle to compulsorily insurer it so as to cover the liability in respect of a person who was travelling in*

a vehicle pursuant to a contract of employment in terms of proviso (ii) appended to Section 95 of the 1939 Act does not occur in Section 147 of the 1988 Act. The changes effected in the 1988 Act vis-à-vis the 1939 Act as regards definitions of "goods vehicle", "public service vehicle" and "stage carriage" have also a bearing on the subject inasmuch as the concept of any goods carriage carrying any passenger or any other person was not contemplated."

The learned counsel for the respondent insurance company has further argued that the jeep was only insured for third party risk and no separate premium was paid for the passengers traveling by it, hence the Claim Tribunal was justified by holding the owner of the jeep for payment of compensation to the claimants. The learned counsel has relied upon the case National Insurance Co. Ltd. Vs. Jugal Kishor and others AIR 1988 SC 719. The Apex Court has observed as under:

"9. *Learned Counsel for the appellant then urged relying on the decision of this Court in British India General Insurance Co. Ltd. v. Captain Itbar Singh*[2] *that in view of sub-section (6) of Section 96 of the Act no insurer to whom the notice referred to in sub-section (2) thereof has been given, is entitled "to avoid his liability" to any person entitled to the benefit of any such judgment as is referred to in sub-section (1) thereof otherwise than in the manner provided for in sub-section (2). On this basis it was urged that the appellant was not entitled to assert that its liability was confined to Rs 20,000 only inasmuch as this is not one of the defences specified in sub-section (2) of Section 96 of the Act. We find it difficult to agree with this submission either. Firstly, in para 12 of the report of this very case it has been held that sub-section (2) of Section 96 in fact*

deals with defences other than those based on the conditions of a policy. Secondly, from the words "to avoid his liability" used in sub-section (6) of Section 96 it is apparent that the restrictions placed with regard to defences available to the insurer specified in sub-section (2) of Section 96 are applicable to a case where the insurer wants to avoid his liability. In the instant case the appellant is not seeking to avoid its liability but wants a determination of the extent of its liability which is to be determined, in the absence of any contract to the contrary, in accordance with the statutory provision contained in this behalf in clause (b) of sub-section (2) of Section 95 of the Act. In the instant case since as seen above the appellant did not undertaken in the policy any liability in excess of the statutory liability the award against it could be only in accordance with the said statutory liability."

In view of the observation made above, I find no infirmity in the judgment and award passed by the Claim Tribunal. The appeal has no force and is hereby dismissed.

No order as to costs.

(Rajesh Tandon J.)

26.8.2004

*Dhyani